Contek Int., Inc. *and* Laborers' International Union of North America, Local 592, AFL–CIO. Case 22–CA–26321

June 23, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On December 30, 2004, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

In adopting the judge's finding that the Respondent violated Section 8(a)(5) of the Act by refusing to adhere to the terms of the parties' collective-bargaining agreement, we note that the Respondent does not raise, in its exceptions, the affirmative defense that the agreement is voidable based on either a fraudulent or a material misrepresentation by the Union to induce the Respondent's assent to the contract. See Restatement of Contracts Second § 164 (1981). Consequently, we make no findings or conclusions concerning the merits of such defenses. Moreover, in adopting the judge's decision, we disavow his statement that "it is well settled that a unilateral mistake is not grounds for rescission of a contract." Although the judge cited *AEi2 LLC*, 343 NLRB No. 56 (2004), for that proposition, and that statement does appear in the administrative law judge's decision in *AEi2*, supra, it is not a correct statement of the law. The judge in *AEi2* relied on the Board's decision in *Carpenters Local 405*, 328 NLRB 788, 794 (1999), as support for that proposition, but *Carpenters Local 405* actually recognized that although the remedy is granted sparingly, unilateral mistake *may be* grounds for rescission of a contract. In doing so, the Board in *Carpenters Local 405* quoted *Apache Powder Co.*, 223 NLRB 191 (1976), in which the Board stated: "we agree that rescission of a contract for unilateral mistake is, for obvious reasons, a carefully guarded remedy reserved for those instances where the mistake is so obvious as to put the other party on notice of an error." 328 NLRB at 794.

In light of the foregoing, we find that the Respondent's signature on a contract proffered by the Union, expressly binding the Respondent to an agreement it did not read, is not the kind of obvious error justifying rescission under *Apache*, supra.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Contek Int., Inc., Piscataway, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified below.

1. Substitute the following for paragraph 1(a).

"(a) Failing and refusing to bargain in good faith with the Laborers' International Union of North America, Local 592, AFL–CIO by failing and refusing to adhere to the collective-bargaining agreement between the Building Laborers' District Councils and Local Unions of the State of New Jersey and the Building, Site and General Contractors and Employers, effective May 1, 2002, to April 30, 2007."

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. June 23, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

[1] We shall modify the judge's recommended Order to more accurately reflect the violation found and shall substitute a new notice to conform its language to that set forth in the Order.

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain in good faith with the Laborers' International Union of North America, Local 592, AFL–CIO by failing and refusing to adhere to the collective-bargaining agreement between the Building Laborers' District Councils and Local Unions of the State of New Jersey and the Building, Site and General Contractors and Employers, effective May 1, 2002, to April 30, 2007.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL adhere to the collective-bargaining agreement between the Building Laborers' District Councils and Local Unions of the State of New Jersey and the Building, Site and General Contractors and Employers, effective May 1, 2002, to April 30, 2007, and, WE WILL make whole employees and benefit funds for any losses suffered as a result of our unlawfully refusing to adhere to the collective-bargaining agreement, with interest.

CONTEK INT., INC.

Brian A. Caufield, Esq., for the Government.[1]
Eric C. Stuart, Esq., for the Company.[2]
John C. Abbamonte, Esq., for the Union.[3]

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. I heard this case in trial in Newark, New Jersey, on October 19, 2004. The case originates from a charge, filed by Labors' International Union of North America, Local 592, AFL–CIO (the Union) on April 19, 2004, against Contek Int., Inc. (the Company). The prosecution of this case was formalized on July 28, 2004, when the Regional Director for Region 22 of the National Labor Relations Board (the Board), acting in the name of the Board's General Counsel, issued a complaint and notice of hearing (the complaint) against the Company.[4]

The complaint, as amended, alleges the Company is an employer engaged in the building and construction industry. It is alleged the Company executed a short form agreement (short form agreement) binding it to the collective-bargaining agreement between the Building Laborers' District Councils and Local Unions of the State of New Jersey and the Building, Site and General Contractors and Employers (collective-bargaining agreement), effective for the period May 1, 2002, to April 30, 2007, and by doing so agreed to recognize the Union as the exclusive collective-bargaining representative of the unit.[5] It is alleged the Company granted such recognition to the Union without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the National Labor Relations Act (the Act). It is alleged that since on or about May 3, 2003, based on Section 9(a) of the Act, the Union has been the limited exclusive bargaining representative of the unit. It is alleged that on several occasions since March 2004, the Union by telephone and letter, requested the Company adhere to the collective-bargaining agreement, just described, at the Company's Millennium Homes Orchard Square (Millennium Homes) jobsite in East Rutherford, New Jersey, and that the Company since that time has refused to adhere to the collective-bargaining agreement. It is alleged that by the Company's refusal to adhere to the collective-bargaining agreement at its Millennium Homes jobsite it is refusing to bargain collectively, and in good faith, with the exclusive bargaining representatives of its employees within the meaning of Section 8(d)[6] of the Act and in violation of Section 8(a)(1)[7] and (5)[8] of the Act.

The Company acknowledges it is an employer engaged in the building and construction industry subject to the Board's jurisdiction and that on May 2, 2003, it executed a short form agreement with the Union. The Company contends the short form agreement it signed applied only to a single jobsite (Union County Scotch Plains Vo-Tech School project) and does not apply to the Millennium Homes jobsite and/or that the short form agreement is void based on the doctrine of mutual and/or

[1] I shall refer to counsel for the General Counsel as the Government.

[2] I shall refer to the Respondent as the Company.

[3] I shall refer to the Charging Party as the Union.

[4] At trial the Government was granted permission to amend the complaint as set forth in GC Exh. 2.

[5] The appropriate unit for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act is:

> All laborers engaged in or employed as tenders, cleanup, water removal, weather or other temporary protection work temporary heat, scaffolds, masonry scaffolds, excavations, foundations, site preparation and clearance, transmission lines, concrete, bituminous concrete and aggregates, streets, ways and bridges, trenches, manholes handling and distribution of pipe, shafts, tunnels, subways and sewers, drains, culverts and multi-plate, sidewalks and curbs, underpinning, lagging, bracing, propping and shoring, drilling, signal men, general excavation and grading, wrecking, railroad track work, use of tools, hazardous materials, and all such other work assigned by the Company.

[6] Sec. 8(d) of the Act, 29 U.S.C. § 158(d), provides in relevant part, that to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder

[7] Sec. 8(a)(1) of the Act, 29 U.S.C. § 158(a)(1), provides that it shall be an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7," "which secures the rights of employees," inter alia, to "bargain collectively."

[8] Sec. 8(a)(5) of the Act, 29 U.S.C. § 158(a)(5) requires in relevant part that an employer bargain in good faith with the representatives of its employees.

unilateral mistake. The Company denies having violated the Act in any manner alleged in the complaint.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. I carefully observed the demeanor of the witnesses as they testified.[9] I have studied the whole record, the parties' briefs, and the authorities they rely on. Based on more detailed findings and analysis below, I conclude and find the Company violated the Act substantially as alleged in the complaint.

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

The Company is a New Jersey corporation with an office and place of business in Piscataway, New Jersey, where it is, and has been, engaged as a concrete contractor in the construction industry. During the 12 months ending July 28, 2004, a representative period, the Company purchased and received at its Piscataway, New Jersey location goods valued in excess of $50,000 directly from points outside the State of New Jersey. The evidence establishes, the parties admit, and I find, the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties admit and I find the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The Company was founded in 2000, and is equally owned by Company Chief Executive Officer Kian Rasekhi and Company President Eric Dziadyk. Raskhi and Dziadyk have coequal power to manage the Company. The Company, which performs concrete and masonry construction work, operates nonunion. A high percentage of the Company's work is performed for private owners and contractors; however, the Company does perform some public sector projects. It is with one of the public sector projects that the case herein has its origins.

Union Business Manager Patrick Viola testified that while attending a weekly building trades meeting in Bergen County, New Jersey, in April 2004, he learned the Company, listed with the Union as a union contractor, was working as a subcontractor at a project, within its jurisdiction, in East Rutherford,[10] New Jersey, known as the Millennium Homes jobsite. The Union (Local 592) is bound by the collective-bargaining agreement and its jurisdiction is the northern portion of the State of New Jersey, more specifically Bergen, Passaic, and Sussex Counties. Viola explained the Union keeps an updated computer listing of all union contractors in the State of New Jersey. The Union also obtains listings of construction jobs being started in the various counties in the State of New Jersey. Once it is established that a unionized contractor or subcontractor has started a project the Union makes every effort to have the contractor abide by its contractual obligations specifically utilizing union laborers at the jobsite and making the required contributions per the collective-bargaining agreement.

With the above-described information and at the direction of the Union its Field Representative Tony Francisco[11] contacted the Company to inquire when the Company would start work on the Millennium Homes project and reminded the Company it needed to place union workers on the job. The Company told the Union it would not utilize union laborers on the Millennium Homes project.

Union Business Manager Viola testified that after the Company refused to utilize union laborers on the project the Union's attorney demanded, in an April 9, 2004 letter to the Company, that it honor the parties collective-bargaining agreement. The letter addressed to the Company's Piscataway, New Jersey, office reads in part as follows:

> This office represents Laborers Local 592 with whom your company has a signed Collective Bargaining Agreement. Your company is currently conducting work at the Orchard Square, Rutherford jobsite in breach of the Collective Bargaining Agreement by failing to employ members referred by Local 592 pursuant to the "hiring" provision of the Agreement.
>
> . . . .
>
> Notwithstanding any position by you that the work is being performed by another unrelated company, the Collective Bargaining Agreement contains a provision for "preservation of bargaining unit work . . . ."
>
> It is requested you immediately contact Patrick Viola, Business Manager of Local 592 at (201) 585–0305 to remedy this breach. In the event you fail to contact Mr. Viola or this office within 48 hours, a charge will be filed with the National Labor Relations Board for breach of the Collective Bargaining Agreement and demanding lost wages.

Union Business Manager Viola testified the Company continued to fail to abide by the parties collective-bargaining agreement so the Union established a picket line at the Millennium Homes jobsite. Union Organizer Wieslaw Gandurski testified he organized the picket line at the Millennium Homes jobsite starting on April 8, 2004. He testified the Union picketed the jobsite Monday through Friday 6:30 a.m. until 4 p.m. until May 26, 2004. Gandurski testified he observed 12 laborers at the Millennium Homes jobsite; none of which were from the Union. Gandurski explained that 1 of the 12 laborers showed him his paycheck that reflected he was being paid $15 per hour. According to Union Business Manager Viola, the Company never complied, in any manner, with the collective-bargaining agreement, never utilized union laborers, nor paid the contract wage rates or benefits at the Millennium Homes jobsite.

[9] Credibility resolutions have been made based upon witness demeanor, the weight of respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. Evidence contrary to my findings has not been ignored but rather has been rejected as being in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

[10] East Rutherford is located in Bergen County, New Jersey. Rand McNally Road Atlas 1999, United States. Canada. Mexico at 72

[11] The spelling for this name is as it appears in the transcript at p. 27. I am not unmindful the name may be otherwise spelled.

As earlier noted, the Union on April 19, 2004, filed the charge that gives rise to the case herein. The charge alleges a failure to abide by the collective-bargaining agreement between the parties.

It is important at this point to examine how the Union contends the collective-bargaining agreement, which is, by its terms, effective from May 1, 2002, to April 30, 2007, binds the Company.

Union Field Representative Alfred Castagna testified Crane Construction Company (Crane Construction), a union contractor, served as general contractor for construction of the Union County Scotch Plains Vo-Tech School (Vo-Tech School) project, on which construction started in early 2003. All subcontractors were to be union contractors. The Company was the subcontractor for concrete and masonry work. Castagna testified that since the Company was not a union contractor his office faxed a short form agreement to the Company, which signed it on May 2, 2003, and faxed it back to the Union. Union Field Representative Castagna testified he personally delivered a copy of the collective-bargaining agreement to the Company, a short time thereafter, specifically giving the copy to Company Office Manager Kevin.[12] Castagna explained Company President Dziadyk was in a meeting and unavailable at the time he delivered a copy of the collective-bargaining agreement to the Company.

Company CEO Rasekhi and President Dziadyk view the Company's obligations to unionized contractors and the Union differently than the Union does. The Company admits signing the short form agreement on May 2, 2003, but denies such binds it at any jobsite other than the Vo-Tech School project. Rasekhi specifically testified that when the Company signed the short form agreement it did so for the Vo-Tech School project only.

Company CEO Rasekhi testified he prepared the Company's bid for certain of the concrete and masonry construction work at the Vo-Tech School project utilizing prevailing wage rate data. He said the Company was awarded work as a subcontractor for the general contractor Crane Construction in late 2002, and commenced performing work on the Vo-Tech School project in early 2003. Rasekhi testified that the first few months the Company utilized nonunion employees; albeit, at prevailing wage rates.

Company President Dziadyk testified that after a couple of months on the Vo-Tech School project, as a nonunion subcontractor, Union Representative Alfred Castagna and another representative, met with him and one of his supervisors along with Crane Construction Superintendent Brian Scalza. Castagna asked Dziadyk if he knew that the Vo-Tech School project was a union job. Dziadyk told Castagna no that it was a prevailing wage job. According to Dziadyk, Castagna said the Company's employees could not work shoulder to shoulder with the other workers at the Vo-Tech School project because the Company was not a union contractor. Dziadyk stated a "big argument" took place with Castagna stating, "[W]e're going to have to talk to Crane [Construction] and I [am] going to have to talk to my boss."

[12] The record does not reflect Kevin's last name.

Dziadyk testified he and Company CEO Rasekhi were thereafter called to meet with Crane Construction President Anthony Renaldi.

Company CEO Rasekhi testified the meeting with Renaldi took place in April 2003, at Crane Construction's offices in Hackensack, New Jersey. Rasekhi testified: "[Renaldi] asked us to sign a agreement with the various unions because he's taking too much heat from the union, since he is a signatory with various unions." According to Rasekhi, Renaldi telephoned Union Business Manager Michael Lombardo and Renaldi, Rasekhi, Dziadyk, and Lombardo carried on a long conversation via a speaker telephone. Rasekhi testified, "[W]e all discussed through the speaker phone signing a single job agreement." Rasekhi continued:

> The discussion was that we would do the work by signing an agreement for this job with the Union. And the difference between the prevailing wage and the Union wage is just a minute few pennies per hour and that the Union said they would help us and give us good guys to work with. And that Mr. Renaldi's company Crane is a signatory with them and anybody that he hires has to be the union contractor. And we discussed that since the year 2000 we've been a non-union contractor and we don't want to become a full-fledged union contractor. And this is our second municipal job that we are doing. And we can handle prevailing wage.
>
> And they assured us that this will not hurt us if we sign a, you know, single job— a one-year job, single job. Because this—this—this project is going to last and they're going to take less then one year to complete. And that they would send us good guys and foremans, and additionally we could union cards for some of our own men while they are working, because they can't work shoulder to shoulder with the union guys out of the hall. So we agreed to sign the single job agreement.

As earlier noted, Company President Dziadyk signed the short form agreement on May 2, 2003. Dziadyk explained they had to sign the agreement even after telling Crane Construction President Renaldi they would not sign it. Dziadyk testified, "He [Renaldi] says don't worry about it, don't worry about it, just sign it, just sign it. So I was under the impression this was like a one job agreement." Dziadyk testified that when he told Renaldi the Company would only sign the agreement for that job Renaldi replied, "[N]ot a problem, we're going to resolve this, you sign it for that job, OK? Let's—lets work in . . . harmony on this job, and that's it. Let's finish the project . . . and that's the end of the discussion . . . . " Dziadyk testified that after the Union faxed the short form agreement to him he read it, signed it, and faxed it back to the Union.

Company CEO Rasekhi testified that after completion of the Vo-Tech School project he never heard from the Union again about his Company being unionized until the Company started work at the Millennium Homes project. Rasekhi stated, "[T]he Union came to the [Millennium Homes] jobsite trying to claim the job as a union project." According to Rasekhi, the Union contacted the owner of the Millennium Homes project who told the Union the project was private and he was not interested in

the Union. Rasekhi testified, "[The Union] threatened that they would put up a picket line on this [Millennium Homes] job for us. And that as far as they're concerned, we are signatory with the Union forever."

On cross-examination, Company CEO Rasekhi acknowledged that the short form agreement executed by Company President Dziadyk states it binds the Company to the long form collective-bargaining agreement. Rasekhi also acknowledged language in the collective-bargaining agreement reflects the agreement may not be limited to a "Job Only Agreement" without written approval of the union district council business manager, which approval he acknowledged was neither sought or obtained.

Rasekhi acknowledged on cross-examination by the union counsel that while he speaks with a Persian accent he is an electromechanical engineer who reads, speaks, writes, and conducts business in the English language. Rasekhi specifically stated that shortly before, or after, the short form agreement was signed, he read it.

The short form agreement signed on May 2, 2003, reads as follows:

Short Form Agreement

Building, Site and General Construction Agreement

> The Undersigned Employer, desiring to employ laborers from the New Jersey Building Laborer Local Unions and District Councils affiliated with the Laborers' International Union of North America, hereinafter the "Unions" and being further desirous of building, developing and maintaining a harmonious working relationship between the undersigned Employer and the said Unions in which the rights of both parties are recognized and respected, and the work accomplished with the efficiency, economy and quality that is necessary in order to expand the work opportunities of both parties, and for the construction craft laborers, the undersigned Employer and Unions hereby agree to be bound by the terms and conditions as set forth in the 2002–07 Building, Site and General Construction agreement, which Agreement is incorporated herein as if set forth in full.

The collective-bargaining agreement contains the full terms and conditions of the agreement and is incorporated by reference in the short form agreement. The parties referenced specific portions of the collective-bargaining agreement and such portions are set forth herein.

Article I: "Recognition and Scope of Agreement" section 1.10 Union Recognition, reads:

> The Employer recognizes that the Building and Construction District Councils and Local Unions bound hereby represent a majority of employees of the Employer doing laborer's work and shall be the sole bargaining representatives with the Employer for all employees employed by the Employer engaged in all work of any description set forth under Article II, Section 2.10, Work Jurisdiction, below. The District Councils and Laborer Local Unions hereby are: Northern New Jersey Building Laborers District Council (Locals 592, 325 and 1153); Central New Jersey Building Laborers District Council (Locals 394, 593 and 1030) and the Southern New Jersey Building Laborers District Council (Locals 222,415 and 595).

Article II: "Work and Territorial Jurisdiction" section 2.30 Territorial Jurisdiction, in part, reads:

> This Agreement is effective and binding on all jobs in the State of New Jersey upon execution of the same by the Employer and any building and construction laborer local union bound hereby . . . .

At page 69 of the collective-bargaining agreement the following bold face notification is set forth:

> Note: This Agreement may not be limited to a Job Only Agreement without the written approval of the District Council Business Manager.

B. Discussion, Analysis and Additional Conclusions

The Government argues that the Company has since March 2004, refused to adhere to a collective-bargaining agreement in violation of Section 8(a)(5) and (1) of the Act. The Company argues that when it signed the short form agreement with the Union on May 2, 2003, it was "site specific" limited to the Vo-Tech School project located in Scotch Plains, New Jersey, and did not apply elsewhere.

The short form agreement, which Company President Dziadyk signed, is plain and unambiguous. There is absolutely no indication in the clear language thereof that the parties intended it to be a single-site project agreement. The language of the short form agreement (set forth in full elsewhere in this decision) states simply that the Company desires to employ laborers from the Union and the Union desires to provide those laborers to the Company. The short form agreement reflects in very simple language that the Company and the Union agree to be bound by the terms and conditions of the 2002–to–2007 collective-bargaining agreement. The parties even incorporated by reference the collective-bargaining agreement into the short form agreement "as if set forth in full" in the short form agreement.

The collective-bargaining agreement likewise clearly and unambiguously describes the party's full agreement specifically terms and conditions of employment and applications of such. Specific to this case the Company agreed to recognize the Union as the excusive collective-bargaining representative of its employees performing laborers' work; and, that the collective-bargaining agreement was effective for and binding at all jobs of the Company in the State of New Jersey. It is just as clear that by signing the short form agreement the Company in effect executed the long form collective-bargaining agreement incorporated therein.

With the collective-bargaining agreement in full force and effect and applicable to the Company in March 2004, it was obligated to abide by the terms and conditions thereof at the Millennium Homes project in East Rutherford, New Jersey. The Company admits it did not, as requested, adhere to any of the terms and conditions of the collective-bargaining agreement at that project. It is unrefuted that the Company employed approximately 12 laborers at the project and did not pay contract wages or benefits. The Company's failure, as alleged in

the complaint, to adhere since March 2004, to the collective-bargaining agreement at the Millennium Homes project, violates Section 8(a)(5) and (1) of the Act, and I so find.

The Company in its defense argues the uncontradicted testimony of Company CEO Rasekhi and Company President Dziadyk, that it signed the short form agreement with the verbal understanding it was for the Vo-Tech School project only, requires a finding it was so limited. While I credit their testimony, it is of no avail to the Company. Where, as in the instant case, the agreement is clear and unambiguous, Board precedent prohibits the use of parol evidence to vary the terms of the parties' agreement. *Quality Building Contractors*, 342 NLRB No. 38 (2004); and *NDK Corp*., 278 NLRB 1035 (1986). Where the contract language is unambiguous parol evidence is not only unnecessary but also irrelevant. *NLRB v. Electrical Workers Local 11*, 772 F.2d 571, 575 (9th Cir. 1985).

I specifically reject the Company's contention, based on the teachings of *Sansla, Inc.*, 323 NLRB 107 (1997), that the parol evidence rule is inapplicable in the instant case and that an evaluation of the circumstances surrounding the signing of the short form agreement may be considered. The Company's argument that extrinsic evidence must be considered to evaluate the circumstances surrounding the signing of the short form agreement fails because there is no ambiguity in the language of the short form agreement. The Company would argue there is no description of "the work" or "work opportunities," mentioned in the short form agreement. However, work and work opportunities are clearly described in the collective-bargaining agreement incorporated in the short form agreement. Simply stated it is all work performed by the Company in the State of New Jersey.

The Company's contention it was never provided a copy of the collective-bargaining agreement and somehow that relieves it of its obligations there under is factually incorrect. Union Field Representative Castagna credibly testified he personally delivered a copy of the collective-bargaining agreement to the Company at its offices within a week or two of May 2, 2003.

I reject the Company's contention the Union used its short form agreement for site-specific agreements and the collective-bargaining agreement for all other situations. The documents do not establish any such contention. The collective-bargaining agreement is incorporated in the short form agreement and by signing one a party is signing the other.

The clear language of the short form agreement negates the Company's argument there was a mutual or unilateral misunderstanding or mistake as to the application of the agreement. The two agreements spell out in no uncertain terms its application. Additionally, it is well settled that a unilateral mistake is not grounds for rescission of a contract. *AEi2 LLC*, 343 NLRB No. 56 (2004).

CONCLUSION OF LAW

By, since on or about March 2004, failing and refusing to adhere to the collective-bargaining agreement between the Building Laborers' District Councils and Local Unions of the State of New Jersey and the Building, Site and General Contractors and Employers, effective May 1, 2002, to April 30, 2007, the Company has been failing and refusing to bargain collectively, and in good faith, with the Union as the exclusive bargaining representative of certain of it employees within the meaning of Section 8(d) of the Act and in violation of Section 8(a)(5) and(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found the Company has refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of certain of its employees by, since on or about March 2004, refusing to adhere to the parties collective-bargaining agreement, I shall recommend the Company be ordered to make whole all employees adversely affected by its failure to adhere to the terms of the collective-bargaining agreement in the manner prescribed in *Ogle Protection Service*,183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), and by reimbursing them for any expenses they may have incurred because of its failure to make required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest on all amounts owing as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Any interest and other amounts due the funds shall be in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following[13]

ORDER

The Company, Contek Int., Inc., Piscataway, New Jersey, it officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to adhere to the terms and conditions of the collective-bargaining agreement between the Building Laborers' District Councils and Local Unions of the State of New Jersey and the Building, Site and General Contractors and Employers, effective from the period May 1, 2002, to April 30, 2007.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Adhere to the collective-bargaining agreement between the Building Laborers' District Councils and Local Unions of the State of New Jersey and the Building, Site and General Contractors and Employers, effective May 1, 2002, to April 30, 2007.

(b) Make whole employees and benefit funds for any losses suffered as a result of unlawfully refusing to adhere to the collective-bargaining agreement between the Building Laborers' District Councils and Local Unions of the State of New Jersey and the Building, Site and General Contractors and Employers, effective May 1, 2002, to April 30, 2007, with interest, as set forth in the remedy section herein.

[13] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Preserve, and within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze any amounts due under the terms of this Order.

(d) Within 14 days after service by the Regional Director for Region 22 of the Board, post at its Piscataway, New Jersey, facility copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 22 after being signed by the Company's authorized representative shall be posted by the Company and maintained for 60 consecutive days in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced or covered by any other material. In the event that during the pendency of these proceedings the Company has gone out of business or closed the facility involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the notice to employees, to all employees employed by the Company on or at any time since March 1, 2004.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 22 of the National Labor Relations Board sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Company has taken to comply.

Dated, Washington, D.C. December 30, 2004

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain in good faith with Laborers' International Union of North America, Local 592, AFL–CIO by failing and refusing to adhere to the collective-bargaining agreement between the Building Laborers' District Councils and Local Unions of the State of New Jersey and the Building, Site and General Contractors and Employers, effective May 1, 2002, to April 30, 2007.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL bargain in good faith with Laborers' International Union of North America, Local 592, AFL–CIO and adhere to the collective-bargaining agreement between the Building Laborers' District Councils and Local Unions of the State of New Jersey and the Building, Site and General Contractors and Employers, effective May 1, 2002, to April 30, 2007, and, WE WILL make whole employees and benefit funds for any losses suffered as a result of our unlawfully refusing to adhere to the collective-bargaining agreement, with interest.

CONTEK INT., INC.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."